

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014020775

ORDER DENYING DISTRICT'S
REQUEST FOR CONTINUANCE

On March 10, 2014, District requested to continue the March 20, 2014 hearing date to March 26, 27, and April 1, 2014, on the ground that its counsel was unavailable due to three pending OAH due process matters on March 20, 2014. Student opposed the motion on the ground that Student's expert had been retained to appear on March 20, 2014.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. The conflict declared by District's counsel is with three mediations in three different school districts, all of which are set for March 20, 2014. Obviously, District's counsel cannot be in four places at once, and any conflict was within the control of District's counsel. Mediation is voluntary, and may be engaged in up to and even after a due process hearing has begun, such that a hearing would take precedence. Further, it is not good cause for a continuance that the matter was set for one day of hearing. The scheduling order specifically calls for the hearing to continue day to day, Monday through Thursday, until completed, such that District already knows what the additional days will be. Here, where District has chosen to file for due process, it is not good cause to grant District a continuance of a hearing so that its counsel may attend mediations on behalf of other school districts.

IT IS SO ORDERED.

DATE: March 11, 2014

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings